A HANDBOOK FOR PRACTITIONERS | **RUSSIAN FEDERATION**

Civil Liability for Human Rights Violations

OAK FOUNDATION

Bonavero Institute of Human Rights

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Under Russian law, human rights violations may be remedied by actions in tort. The legislative framework provides for a wide scope of application for this remedy. Recent trends in case law, such as compensation for pure economic losses, recognition of indirect causation, and more liberal approaches to the amounts of damages awarded, have expanded on the statutory provisions. Russian tort law has become fertile ground for efficient human rights protection to flourish. And yet, this potential is somewhat hindered by institutional obstacles and a lack of appetite for litigation among citizens.

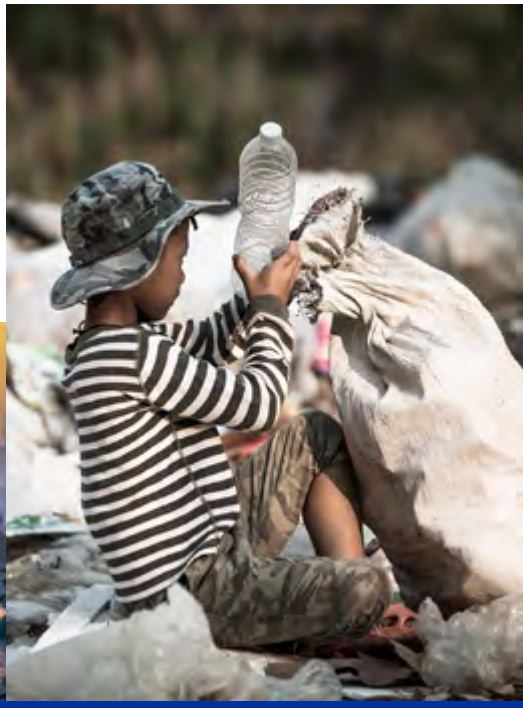
INDICES

124/167
Democracy Index 2021 Ranking

19/100
Freedom House 2022 Score

136/180
Transparency International Corruption Index 2021 Ranking

The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: Democracy Index by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); Freedom House (rates people's access to political rights and civil liberties with 100 being an optimal score); and Transparency International Corruption Index (ranks 180 countries by their perceived levels of public sector corruption).



Introduction*

1. The Russian legal system is part of the European (Romano-Germanic) law family. Its main sources of law are laws and regulations adopted by the country's various authorities according to their competence.

2. Russia is a federation with several levels of government: the national federal level; the level of the constituent entities (regions) of the federation; and the municipal level. Each level adopts regulations within the scope of its competence. Protection of human rights and remedying their violations is predominately regulated at the federal level.

3. The main sources of law at the federal level are i) the Constitution; ii) universally recognised principles of international law and international treaties ratified by Russia; iii) federal constitutional laws; and iv) federal laws adopted by the Parliament. For each area of law there is usually an applicable 'code' – a comprehensive federal law containing the main principles and the most important legal provisions for the respective field, for instance the Civil Code,[1] the Labour Code,[2] the Criminal Code,[3] and the Administrative Offence Code.[4]

4. The most important international treaties ratified by Russia in the context of human rights are the International Covenant on Civil and Political Rights (the '**ICCPR**') and the International Covenant on Economic, Social and Cultural Rights. For the last two decades Russia has been a party to the European Convention on Human Rights (the '**ECHR**'), providing victims of human rights violations in Russia with an option to elevate their cases to the European Court of Human Rights (the '**ECtHR**') after local remedies are exhausted. However, on 16 September 2022 Russia will cease to be a party to the ECHR, and applications to the ECtHR against Russia will no longer be possible.[5] Previously, Russian courts have occasionally referred to ECtHR judgments for their persuasive authority on human rights matters. However, it appears unlikely that this practice will survive after Russia's status as a party to the ECHR ceases.

* Note that government-sponsored resources may not be accessible from outside of Russia.

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1 The Russian Civil Code consists of four parts, each part being enacted by a separate federal law: Federal Law No 51-FZ dated 30.11.1994 (Part One); Federal Law No 14-FZ dated 26.01.1996 (Part Two); Federal Law No 146-FZ dated 26.11.2001 (Part Three); Federal Law No 230-FZ dated 18.12.2006 (Part Four). For the most up-to-date professional English translation, see PB Maggs and AN Zhiltsov (trs, eds), Civil Code of the Russian Federation. Parts 1–4 (Statut, 2020). Another translation is available online.

2 Federal Law No 197-FZ dated 30.12.2001.

3 Federal Law No 63-FZ dated 13.06.1996.

4 Federal Law No 195-FZ dated 30.12.2001.

5 Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of article 58 of the European Convention on Human Rights dated 22 March 2022.

5. The Russian judicial system is comprised of two main court branches: the **courts of general jurisdiction** which deal predominantly with criminal cases and civil cases involving individuals, and **commercial (‘*arbitrazh*’) courts** which deal predominantly with commercial disputes involving legal entities and individual entrepreneurs. The human rights cases fall mainly to the jurisdiction of the courts of general jurisdiction. Proceedings in the courts of general jurisdiction are governed by the Civil Procedure Code (the ‘**Civil Procedure Code**’),[6] while proceedings in the commercial courts are governed by the Commercial Procedure Code.[7] Each branch has courts of first instance, appeal, and cassation. The highest court for both branches is the Supreme Court of the Russian Federation (the ‘**Supreme Court**’).[8]

6. **Resolutions of the Plenum and Presidium of the Supreme Court** are legally binding for the lower courts.[9] Other judicial acts of the Supreme Court (including most of its judgments in individual cases), as well as judgments of lower courts of general jurisdiction and commercial courts, are not binding per se but may be cited as persuasive authorities. In the latter scenario it is usually relevant whether case law on a particular matter is uniform and consistent.

7. The Constitutional Court of the Russian Federation (the ‘**Constitutional Court**’) – the third branch of the judicial system – is tasked with ensuring that federal laws and other regulations of the federal government are consistent with the Constitution. Judgments of the Constitutional Court which provide an interpretation of federal laws, or which declare them to be inconsistent with the Constitution are binding on all authorities.

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6 Federal Law No 138-FZ dated 14.11.2002.

7 Federal Law No 95-FZ dated 24.07.2002.

8 Prior to 2014, the Supreme Commercial Court was the highest court for the commercial courts branch. However, in 2014, the Supreme Commercial Court was dissolved, and its functions passed to the Supreme Court.

9 Certain judicial acts of the Plenum and Presidium of the Supreme Commercial Court remain binding as well.

General Questions

1

Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

2

What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

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4

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What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

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Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

8

Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

CS

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Q1 Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

Actions in tort

8. The most common civil remedy for a human rights violation under Russian law would be an action in tort governed by the Civil Code. Article 1064(1) of the Civil Code reads:

> *'Harm caused to the personality or the property of an individual, as well as harm caused to the property of a legal entity shall be fully compensated by the person who caused such harm.'*

This formula is known as the general tort rule (or '*general delict*') which means that, unless special rules provide otherwise, *any* harm inflicted by a wrongful and intentional or negligent behaviour should be compensated by the tortfeasor.

9. '*Personality*' in this rule comprises any personal rights and includes human rights. Consequently, any harm caused by a wrongful infringement of a victim's human rights is actionable under tort law.

10. This rule generally applies irrespective of whether a tortfeasor is a public body, legal entity, or an individual.

11. A successful action in tort under article 1064(1) of the Civil Code requires the existence of four elements, namely **harm, wrongfulness, causation**, and **fault** (each will be outlined at [24]-[30] below).

12. The Civil Code and other federal laws provide for special tort rules that are applicable in certain contexts and have predominance over the general tort rule. Such rules may eliminate or specify elements of tort which are absent in the general tort rule, or they may simply reaffirm or refer to the general tort rule as being applicable to certain scenarios without any substantive modification. If a case does not fall within any of the special tort rules (or if a special rule expressly or implicitly refers to the general tort rule without modification), it is actionable under the general tort rule. We outline below some of the special rules, which are potentially applicable to the case scenarios considered in this report.

Assault or unlawful arrest and detention

13. Articles 16 and 1069 of the Civil Code provide that actions in tort may be brought against the State, State bodies, and their officials. Article 1069 reads:

> *'Harm caused to an individual or a legal person as a result of illegal actions (or omissions) of State bodies, local government bodies, or officials of these bodies, including as the result of the issuance of an act of a State body or an act of a local government body not corresponding to a statute or other legal act, is subject to compensation. The harm shall be compensated at the expense respectively of the Treasury of the Russian Federation, the treasury of a region of the Russian Federation, or the treasury of a municipal formation.'*

14. Article 1070 of the Civil Code provides that harm caused by investigative and prosecution authorities and courts as a result of, inter alia, illegal accusation or arrest is compensable on a faultless basis (while the general rule is that a person may escape liability by proving that they are not at fault). This type of liability is called 'strict liability'. For example, a prison inmate who was granted a provisional release was awarded moral damages under article 1070 for a two-week delay in his release.[10]

Environmental harm

15. Article 75 of the Federal Law on Protection of the Environment No 7-FZ dated 10.01.2002 (the '**Law on Protection of the Environment**') sets out that breaches of environmental regulations may be remedied, amongst others, through actions for compensation of harm (other remedies include administrative, disciplinary, and criminal actions).

Articles 77 and 79 of the Law on Protection of the Environment distinguish between direct harm to the environment (**public environmental harm**) and reflective harm to private persons' health and property resulting therefrom (**private environmental harm**). Public environmental harm is compensated to respective local budgets, whereas private environmental harm is compensated to respective individuals.

16. Actions for compensation of public environmental harm may be initiated by a wide range of applicants (federal, state, and municipal government bodies; prosecutors; individuals; public associations; and non-profit organisations acting in the sphere of environmental protection). In practice such actions are mainly pursued by public authorities and are more common than actions for compensation of private environmental harm. For example, in the infamous Norilsk-Taimyr case, the claim was filed by the Federal Service for Supervision of Natural Resources (see [98] below).

17. Article 79(2) of the Law provides that private environmental harm shall be compensated in accordance with civil law legislation. This provision refers to the rules on actions in tort as provided in the Civil Code: the general tort rule applies unless the case falls under any specific rule.

10 Ruling of the Supreme Court No 53-KAD21-11-K8 dated 22.09.2021.

18. Article 1079 of the Civil Code provides for a potentially applicable specific rule. It reads that a harm caused by an '**ultrahazardous activity**' is compensable on a faultless (strict liability) basis. Ultrahazardous activities may include, for example, operation of motor vehicles and railways, the conducting of construction works, use of high-voltage electrical or atomic energy, explosive substances (the list is not exhaustive). It is often the case that public and private environmental harm is caused by an ultrahazardous activity (eg operation of an oil-well or treatment of hazardous waste).

Harmful or unfair labour conditions

19. Article 419 of the Labour Code provides that violations of labour regulations may be remedied, amongst others, through compensation claimable via the following two types of action (other remedies can be sought through administrative, disciplinary, and criminal actions).

20. The first type is the **regular civil action in tort** governed by the rules of the Civil Code. There are no specific tort rules for remedying harmful or unfair labour conditions, hence the general tort rule will apply.

21. The second type is an action for **compensation for harm inflicted at work** governed by Chapter 38 of the Labour Code. It applies to four defined case scenarios: unlawful restriction of access to work, harm to employee's property, delay in payment of wages, and compensation of moral damages to employees. Authorities diverge on how these provisions interact with the rules on tort. For instance, the Supreme Court has held that tort law does not apply to actions concerning unlawful restriction of access to work,[11] whereas with regard to the other case scenarios the courts refer to tort rules from time to time.[12]

SPOTLIGHT: LAW ON SOCIAL INSURANCE

The Federal Law on Compulsory Social Insurance against Accidents at Work and Occupational Diseases No 125-FZ dated 24.07.1998 (the '**Law on Social Insurance**') provides that employers shall insure the defined categories of employees against industrial accidents and work-related diseases. Insurance premiums are paid by employers, and employees are entitled to insurance compensation if an accident occurs. Having a claim against an insurer would not render a claim against an employer impossible, as long as the employee does not become overcompensated. Therefore, an employee may claim compensation from the employer for harm not compensated by the insurer. For example, under article 8(3)(2) of the Law on Social Insurance the statutory insurance does not cover compensation of moral damages, and a victim may thus resort to a direct claim against an employer for compensation of such harm.

11 Judgment of the Supreme Court No GKPI11-2044 dated 25.01.2012.

12 An example of this is the ruling of the Supreme Court No 49-KG21-2-K6 dated 15.03.2021.

Other remedies – *actio negatoria*

22. ***Actio negatoria*** (an action for protection against violations of rights in property not connected with deprivation of possession) may serve the purpose of human rights protection for the three defined harms. It may provide an eventual victim with an injunction and thus hinder prospective violations. For instance, in a dispute between two neighbours, a claimant who was allergic to bees asked for an injunctive relief which required dismantling the respondent's apiary. The Supreme Court granted the injunction under the rules of *actio negatoria*.[13] Such actions naturally have a limited sphere of application and are extremely rare in practice, hence we will not comment on them further in the following sections.

Interaction between civil and criminal proceedings

23. Narratives of fact which make the basis for a civil action in tort may also be a basis for a **criminal action**. Instead of commencing civil proceedings, a victim may choose to first request the initiation of criminal proceedings, and then bring a civil claim for compensation of damages within the criminal proceedings. If the alleged perpetrator is convicted, the victim will get their harm assessed and compensation awarded just as they would in regular civil proceedings. The strategic benefit of resorting to criminal action in the first instance is that the investigating authorities naturally have greater means for proving violations by perpetrators, and victims may then rely on facts proved by the investigating authorities to argue their civil cases. The downside is that victims lose control over the process (as control is assumed by investigators and prosecutors) and the path to compensation may actually get much longer.

Q2 What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

A general action in tort presupposes existence of four elements, namely harm, wrongfulness, causation, and fault.[14] Specific tort rules may eliminate or modify some of the elements or add new ones (see for instance [14] and [18] above). The burden of proving the respective elements lies with the claimant, save for fault, which is presumed under article 1064(2) of the Civil Code, and hence the burden to disprove fault is shifted onto the respondent (see [29] below).

Harm

24. Harm means 'any detraction from a legally protected tangible or intangible benefit, any adverse change in a legally protected benefit that may be either material or non-material (intangible)'.[15] The definition is broad, so effectively any diminution in a claimant's right may be considered a 'harm'. There are debates as to what harm is compensable in pure economic loss cases (see [25] below).

13 Ruling of the Supreme Court No 37-KG19-4 dated 28.05.2019.

14 Resolution of the Constitutional Court No 36-P dated 18.11.2019.

15 Ruling of the Supreme Court No 81-KG14-19 dated 27.01.2015.

Wrongfulness

25. Wrongful conduct is deemed to be established if the offender's actions (or omissions) violate the aggrieved party's rights (eg rights *in rem*, personal rights, contractual rights) and even economic interests (thus leading to the idea of compensability of pure economic losses), or if the offender's conduct violates a statute or good-faith standards. Proving wrong is usually straightforward since harmful conduct is commonly considered wrongful[16] unless a respondent can prove some justifying circumstances (such as self-defence or a state of necessity). The position is usually more nuanced in cases where pure economic loss is sought. (Discussion of **pure economic loss** cases is intentionally omitted here and elsewhere in this commentary as such cases fall outside the scope of the defined case scenarios under consideration.)

26. Under article 1064(3) of the Civil Code, harm caused by lawful actions is only compensable in cases provided for by law. For instance, policemen are not liable for harm inflicted upon citizens and organisations by their use of physical force, special means (as defined by the legislation, namely electroshock devices, water cannons, service animals, etc), or firearms, if the use was carried out on the grounds and in the manner established by federal laws (article 18(9) of the Federal Law on Police No 3-FZ dated 07.02.2011 (the 'Law on Police')).

Causation

27. It shall be demonstrated that it was the respondent who caused the harm. The Supreme Court commonly holds that a causal link between a respondent's acts and a claimant's harm exists if such harm is an ordinary consequence of the wrongdoing, or if a respondent's behaviour considerably increased the likelihood of the harm.[17] Causation must be proved with a reasonable degree of certainty: for example, in a case where it was presumed that a victim was contaminated with hepatitis in the course of a blood transfusion and not elsewhere;[18] or in another case when the probable cause of harm (a pipeline leakage) occurred on territory controlled by the respondent, it was presumed that it was the latter who had caused the harm.[19]

Fault

28. It shall be demonstrated that the action which caused harm was committed with the respondent's fault. Fault is usually understood as a tortfeasor's deviation from the standard of conduct imposed on an actor in a similar factual context. Although intention and negligence are traditionally distinguished, the gravity of the tortfeasor's fault may play some role only in determining the amount of moral damages. Therefore, existence of fault in the form of negligence would be sufficient for an action in tort.

29. In the vast majority of instances, wrongfulness of conduct implies the presence of fault. There is hence an overlap between the two. That is why article 1064(3) of

16 An example is the Resolution of the Supreme Commercial Court No 4515/10 dated 27.07.2010.

17 Resolution of the Plenum of the Supreme Court No 7 dated 24.03.2016, para 5.

18 Bulletin of case law by courts of the Krasnoyarsk region with regards to improper provision of medical services dated 24.04.2006, section 'Forensic report on the case'. It can be accessed via legal database service Consultant (see para [79] in this report).

19 Resolution of the Commercial Court of the North-Western District dated 20.08.2013 in case No A56-4092/2012.

the Civil Code establishes the **presumption of fault** of the person who caused harm, ie the claimant is not required to establish the wrongdoer's fault as a separate element of the burden of proof – it is sufficient to demonstrate that the respondent's conduct was wrongful (or simply harmful, since existence of harm, in turn, commonly leads to assumption of wrong). However, with this assumption in place, it is still conceivable that a respondent may prove that they were not at fault (although this is difficult in practice).

30. Furthermore, there are specific tort rules which eliminate the criterion of fault, so that the absence of fault on the part of the wrongdoer does not exclude their liability (in so-called faultless or strict liability cases). Examples of this are harm caused by an ultrahazardous activity (article 1079 of the Civil Code, see [18] above) or harm caused by a product (paragraph 3, chapter 59 of the Civil Code).

Q3 Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

31. The general rule on **multiple tortfeasors' liability** is contained in article 1080(1) of the Civil Code, which reads as follows:

'Persons who have jointly caused harm shall be jointly and severally liable to the victim.'

32. We outline below certain typical cases and solutions developed through case law.

Case one (tortfeasors united by intent)

33. In this scenario several persons act with a common intent to cause harm. The harm may be directly inflicted by just one or some of the wrongdoers, while others may have contributed to the result in another way. The outcome prevailing in case law is that as long as a wrongdoer intended to inflict the harm and has in some way contributed to it, they shall be liable for the harm jointly and severally with other tortfeasors. An example might be if two persons were beating up a victim, and a third one was serving as a lookout, all three of them would be deemed joint tortfeasors, with no distinction being made as to whether physical harm was inflicted on the victim by any particular wrongdoer. The joint nature of the wrongdoers' acts in such cases is evidenced by their concurrence, coordination, and commitment to implementing the intent common to all the participants.[20]

Case two (independently acting tortfeasors causing common and inseparable result)

34. In this scenario, the harm is a common (inseparable) result of the unrelated wrongful acts of several persons. Unlike in case one above, the tortfeasors did not act with a common intent to inflict harm, but their acts ultimately and jointly contributed to a given result. Case law is rather ambiguous: either all contributing tortfeasors may be held jointly and severally liable (provided that the causal contribution of each tortfeasor was considerable), or several (proportionate) liability may be implemented.

20 See the following examples: Resolution of the Plenum of the Supreme Court No 49 dated 30.11.2017, para 9; Resolution of the Plenum of the Supreme Court No 53 dated 21.12.2017, para 22.

SPOTLIGHT: CASE STUDY

In one relevant case, two persons – one who wrongfully took possession of someone else's car and left it on a road, and another who subsequently took the car from where it had been left, dismantled it, and sold it as spare parts – were held jointly and severally liable for the harm caused.[21] In another case, several liability was established for a person who negligently left a car with keys inside, and a thief, who took advantage of the situation, drove the car away and ran over a pedestrian.[22]

Case three (customer-contractor situations)

35. In this scenario a customer engages a contractor to perform works which cause harm to a victim. The outcome prevailing in case law is that the customer and the contractor shall be held jointly and severally liable for the harm caused by the contractor. However, the customer may be released from liability if they can prove that the contractor has exceeded the scope of the assignment.[23]

SPOTLIGHT: CASE STUDY

In a case considered by the Supreme Commercial Court a customer was held liable for the harm caused by their contractor who was instructed by the former to source and store stones for the construction of a filtering dam. On his own initiative, the contractor extracted nearby stones from ancient burial structures which were considered an archaeological monument.[24]

36. The Civil Code provides for an important exception to the above rule: in terms of article 1068 of the Civil Code, if the person that actually caused harm is an employee (rather than an independent contractor), the compensation shall generally be recovered from the employer only, provided that the harm is caused by the employee in the course of their employment (their official, professional) duties. If the employee has violated instructions given by the employer, or the employee followed their own intent to commit a wrong, the employer will still be liable for the harm caused by the employee. But under article 1081(1) of the Civil Code, an employer who has paid compensation for the harm caused by their employee may claim recovery of their costs from the employee, subject to certain labour law limitations (for instance, under article 241 of the Labour Code an employee may not be ordered to compensate more than their average monthly salary, unless certain exceptions apply).

21 Resolution of the Constitutional Court No 7-P dated 07.04.2015, which led to the adoption of article 1080(3) of the Civil Code.

22 See eg Resolution of the Plenum of the Supreme Court No 1 dated 26.01.2010, para 24; Ruling of the Supreme Court No 78-KG20-18 dated 18.05.2020.

23 Plenum No 49 (n 19), para 9.

24 Resolution of the Supreme Commercial Court No 6773/11 dated 10.11.2011.

Q4 When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or an independent contractor in a supply chain?

37. The general rule under Russian law is that a **parent company is not liable for debts of its subsidiary**, and vice versa. This rule is embodied in article 56 of the Civil Code:

> *'The founder of (or a participant in) a legal person or the owner of its property shall not be liable for the obligations of the legal person, and the legal person shall not be liable for the obligations of the founder (or participant) or owner, with the exception of cases provided by the present Code or another statute.'*

38. However, there are certain exceptions to this rule, and we list those of them which may potentially be employed by victims of human rights violations in the defined scenarios.

Exception one

39. The parent company may be liable as an **accomplice**. Russian law exploits a rather broad concept of multiple tortfeasors and is ready to expand liability of accomplices provided that they shared common intent with the direct tortfeasors (see [33] above). Application of this exception is rather fact-specific, and to the best knowledge of the authors there has not yet been a case where it was actually applied. There is hence a degree of uncertainty as to how Russian courts will treat an attempt to shift liability to a parent company under this exception.

Exception two

40. In the context of **bankruptcy**, a parent company or other persons who controlled the actions of a subsidiary may be held liable to the subsidiary's creditors if the creditors are not able to get satisfaction from the bankrupt company, provided that the shortfall of assets occurred because of the controlling persons' acts or omissions (article 61.11 of the Federal Law on Insolvency (Bankruptcy) No 127-FZ dated 26.10.2002 (the 'Law on Insolvency')). This type of liability is called 'subsidiary liability', ie it is secondary to the (primary) liability of the bankrupt company. The claimant will have to prove that the respondent was a controlling person, that full repayment of debts by the bankrupt company is impossible, and that the bankruptcy was caused by the controlling person's acts or omissions. Regulations and case law relating to subsidiary liability are vast, complex, and nuanced. There are further 'subsidiary liability' scenarios other than the one outlined above (see section III.2 of the Law on Insolvency). Claims for subsidiary liability have become a widespread practice in recent years. The courts have lowered thresholds of proof, thus enabling more claims to be satisfied.

Exception three

41. Here a parent company is not an accomplice, but it **siphons off assets** from its subsidiary to avoid actual enforcement of liability. There is recent case law establishing liability in tort for the intentional siphoning off of assets and facilitation thereof.

SPOTLIGHT: CASE STUDY

In a relevant case, an insolvent company had an outstanding tax debt. The company's sole member and director, and his wife, gifted their valuable properties to their sons, arguably to avoid the 'subsidiary liability' for the debts of the company. The tax authority filed a tort claim against, inter alia, the couple's children. The Supreme Court stated that the children shall be jointly and severally liable for the debts of the bankrupt company if it is established that, by acquiring the properties, they had the intention of making it impossible for the creditors of the bankrupt company to obtain their consideration in full.[25]

Piercing the corporate veil

42. The doctrine of '**piercing the corporate veil**', as it is known in other jurisdictions, does not appear in Russian law. Simply put, the task of the 'piercing' doctrine is achieved under Russian law either by the rules on subsidiary liability in a bankruptcy context, or by certain corporate law rules which, for example, empower minority shareholders to recover from majority shareholders damages caused to the company by the latter (article 53.1 of the Civil Code). The first set of rules, under the Law of Insolvency, is outlined above in [40], and the second set of rules, under the Civil Code, is not applicable to the case scenarios under analysis, hence its description is intentionally omitted here. Notwithstanding this, one may find occasional reference to the 'piercing' doctrine in case law, or the irregular application of its underlying ideas without the doctrine being expressly named. It remains to be seen whether these sporadic practices will become an established path.

43. An independent contractor in a supply chain may be liable as an accomplice in terms of exceptions one and three outlined in [39]-[41] above. Furthermore, articles 1095-1098 of the Civil Code set out the **liability of a producer** for harm resulting either from design, formulation, or other defects in goods, works, or services, or from unreliable or insufficient information on goods, works, or services (product liability cases). Product liability under Russian law is 'strict', ie it does not depend upon a respondent's fault (see [30] above).

Q5 What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

44. The primary remedy in an action in tort is monetary compensation in the form of damages. We outline below various types of damages which a claimant may seek.

25 Ruling of the Supreme Court No 305-ES19-13326 dated 23.12.2019; See also Ruling of the Supreme Court No 301-ES17-19678 dated 19.06.2020.

Pecuniary damages

45. Article 15(2)(1) of the Civil Code provides that pecuniary damages may comprise compensation for actual harm (loss of or injury to the claimant's property) and compensation for lost profit (income that was not received and which the claimant would have received under the usual circumstances, had their rights not been violated).

46. Further specific rules determine the composition of claimable damages in certain scenarios. We outline here those of them which are potentially relevant to the three defined harms.

47. Pecuniary damages may comprise the following items in case of harm to health (article 1085(1) of the Civil Code):

- Loss of victim's earnings (income) that they had, or could definitely have had;
- Costs of medical treatment, additional nutrition, acquisition of special vehicles, etc; and/or
- Costs of retraining.

48. In the event of death, pecuniary damages may comprise the following items:

- Burial expenses (article 1094 of the Civil Code); and/or
- Damages due to the loss of a breadwinner: Family members of a deceased who are incapable of working (in particular their minor children or elderly parents), as well as the dependants of a deceased, shall be entitled to demand that the person who caused their death make monthly payments equal to the share in the deceased's earnings that was falling on the respective claimant (articles 1088, 1089 of the Civil Code).

49. The aforementioned damages will normally be awarded if the respective costs have not been fully compensated or may not be fully compensated through other means.

All Russian citizens are subject to compulsory health insurance and are thereby entitled to receive certain medical treatment. Furthermore, employees are subject to compulsory social insurance against industrial accidents and work-related diseases. They are thereby entitled to claim compensation from their insurer if an insured event occurs. Consequently, damages are only claimable to the extent that relevant free-of-charge treatment or compensation has not been provided via general or industrial health insurance.

50. However, the Supreme Court gave a restrictive construction to this rule:

> *'... if the victim who needs these types of assistance and has the right to receive them free of charge was actually deprived of the opportunity to receive such assistance in a high-quality and timely manner, the court has the right to satisfy the victim's claims to recover the costs actually incurred from the respondent [ie the tortfeasor].'*[26]

26 Plenum No 1 (n 21), para 27.

51. **The burden to prove the amount of damages** being sought lies with the claimant. Current case law holds that a claimant must prove the amount of damages with a reasonable degree of approximation, and does not have to strive for a perfect precision. If the amount of damages cannot be established with a reasonable degree of approximation, this does not suffice for rejecting a claim – instead, the court itself should establish the sum of damages considering all the circumstances of the case and the principles of equity and adequacy.[27]

52. Russian courts are known to be conservative when it comes to assessment of damages and normally tend to determine awards as being less rather than more than amounts claimed.

Non-pecuniary damages

53. Infringement of 'personal non-pecuniary rights' will empower the victim to claim moral damages, ie compensation for physical and mental suffering experienced by the individual.

54. 'Personal non-pecuniary rights' comprise such values as life and health, dignity and inviolability, honour and good name, business reputation, inviolability of private life and private home, personal and family privacy, freedom of movement, privilege of correspondence (the list is not exhaustive).

55. Russian courts mostly award nominal sums for moral damages.

Disgorgement of profits

56. Article 15(2)(2) of the Civil Code sets out the following rule:

> *'If the person who has violated a right has received income thereby, the person whose right has been violated has the right to demand – along with other losses – compensation for forgone benefit in a measure not less than such income.'*

57. While some scholars view this as providing for a remedy that is akin to disgorgement of profits, case law is scarce and uncertain. The Supreme Court seems reluctant to deviate from the compensatory nature of the law of damages and tends to either ignore the provision or feature it in a classic loss-of-profit analysis (that is, the tortfeasor's profits would be treated as the victim's lost profit, and the former may be allowed to prove that the latter would not have gained such profits).[28]

58. This remedy might apply in the context of an independent contractor in a supply chain: a contractor, knowingly tolerating human rights violations by its suppliers, may arguably be disgorged of its profit. However, to the best of the authors' knowledge, there has been no case to this effect yet and its implications remain vague.

27 Plenum No 7 (n 16), para 4.

28 An example of this is found in the Ruling of the Supreme Court No 309-ES17-15659 dated 23.01.2018.

Compensation in kind

59. Article 1082 of the Civil Code provides that a claimant may choose to sue a respondent for **compensation in kind** (eg by claiming an object of the same kind and quality, by claiming that the damaged things be repaired, etc). Such reliefs are rarely sought in practice, case law is scarce, and thus this remedy remains to be tested in courts.

60. A special type of compensation in kind is prescribed for public environmental harm cases involving environmental rehabilitation in kind (article 78(2) of the Law on Protection of the Environment). Particular forms of such compensation may be prescribed in federal or municipal laws, such as lands revitalisation (article 13(5) of the Land Code of the Russian Federation)[29] and compensatory planting of greenery (article 4 of the Moscow Law on Greenery Protection No 17 dated 05.05.1999) among others.

Other types of remedies

Punitive damages

61. There are no punitive damages for the three defined harms under Russian law.

Apology

62. The Supreme Court held that courts do not have powers to order an apology in cases concerning harm to dignity, honour, and business reputation.[30] This position is arguably applicable to the three defined harms as well.

63. Article 136(1) of the Criminal Procedure Code of the Russian Federation[31] provides that a public prosecutor shall submit an apology to a wrongly prosecuted person. Article 9(3) of the Law on Police provides that police shall submit an apology to a person whose rights and freedoms were violated by a police officer. One rarely encounters such apologies in practice though.

Injunctive relief

64. Injunctive relief is available under Russian law as a remedy in tort (article 1065 of the Civil Code) or *actio negatoria* (article 304 of the Civil Code). This remedy may find wide application in the context of environmental harm, where a court may suspend operations of an enterprise which harms or may harm the environment.[32]

Declaratory relief

65. A claimant may simply ask the court to recognise the violation of their rights and abstain from claiming further reliefs (eg article 150(2) of the Civil Code). Such applications are rare in practice and their scope of application remains to be tested in courts.

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29 Federal Law No 136-FZ dated 25.10.2001.

30 Resolution of the Plenum of the Supreme Court No 3 dated 24.02.2005, para 18.

31 Federal Law No 174-FZ dated 18.12.2001.

32 Plenum No 49 (n 19), para 24.

Q6 What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

66. Since Russian courts are overloaded, especially the courts of general jurisdiction where violations of human rights are commonly tried, judges may not have sufficient time to deal with complex cases. Furthermore, as there are many different courts in Russia that operate at different levels and in different territories, the practices of lower courts in different regions may be diverse. The means for keeping practices coherent are limited.

67. There are critics who argue that Russian courts lack independence and tend to take the side of public authorities in their disputes with individuals and businesses.[33] Legislative bodies and the judiciary have sought to address these concerns by implementing reforms, most recently in 2018-2019.[34]

SPOTLIGHT: ASSESSMENT OF DAMAGES

When it comes to assessment of damages, courts tend to award less than the amount claimed, rather than more. Awards of moral damages are especially low. For instance, compensation for one day of unlawful detention is typically rated at around RUB 2,000 (EUR 28),[35] and instances of severe harm to health (eg quadriplegia) are assessed, depending on facts, roughly in a range between RUB 400,000 (EUR 5,634) and RUB 1.5 million (EUR 21,127). There have been attempts by the legislature and the Supreme Court to change this (for instance, see Spotlight box after [106] below), but reforms are implemented at a slow pace.

68. Common drivers of human rights actions in other jurisdictions have not taken deep root in Russia. **Class actions** are not widely practiced (the relevant legislation is new[36] and is yet to be tested). Case law on lawyer's **contingency fees** has diverged in the last two decades, ranging from complete denial to cautious acceptance. A recent trend in the Supreme Court has been to uphold contingency fee arrangements.[37] However, it remains to be seen whether the lower courts will follow this position in practice.

69. A positive factor is that **court fees** are relatively low and the litigation process is relatively fast (a claimant may get a judgment in the court of first instance in four to six months from the application date). In the authors' experience, courts are generally empathetic to actions involving human rights violations, although this may differ in politically and socially sensitive cases. The rate of human rights

33 International Commission of Jurists, Report on State of Judicial System in Russia (2010); Kudrin's Centre of Strategic Development, Report on Improvement of the Judicial System in Russia (2018).

34 The reform was implemented in several steps by, among others, the Federal Law No 265-FZ dated 29.07.2018, the Federal Law No 451-FZ dated 28.11.2018, and the Federal Law No 191-FZ dated 18.07.2019.

35 All figures in Euro have been converted from Roubles at the rate of EUR 1 = RUB 71. Numbers have been rounded up.

36 It was introduced by the Federal Law No 191-FZ dated 18.07.2019, and the changes came into force on 01.10.2019.

37 Ruling of the Supreme Court No 305-ES16-20063 dated 20.04.2017.

claims is relatively low: an educated guess would be that this is probably due to the issues listed above and the fact of Russian society being relatively non-litigious.

70. There are certain advantages and disadvantages in **evidence practices** in civil proceedings. Courts tend to use their powers to order disclosure of documents by parties to the case or third parties somewhat restrictively. On the other hand, courts are generally willing to rely on expert evidence and may accept an abbreviated logic as to causation.

71. Alternatives to (or extension of) civil proceedings are as follows:

- Criminal proceedings (see [23] above).
- Administrative proceedings (results of such proceedings may be used as an issue preclusion in civil proceedings).
- Complaint to a prosecutor's office. (If the prosecutor is interested in a case, they may initiate a civil action against a tortfeasor in the interests of a victim. The prosecutor may then use their public powers to collect evidence and plead the case. Prosecutors play the primary role where rights and interests of a wide range of individuals are affected, such as in an environmental context.)
- Complaint to the federal ombudsman, the Russian Commissioner for Human Rights, or a regional ombudsman (although the efficiency of these is widely questioned).

72. Until recently, victims could complain to the European Court of Human Rights. However, this option will cease to be available from 16 September 2022 (see [4] above). Nevertheless, by virtue of the ICCPR to which Russia is a party, certain human rights cases can still be elevated to the Human Rights Committee.

Q7 Can civil claims be brought against a foreign respondent and if so, what are the rules for that?

73. The jurisdiction of Russian courts over disputes involving foreign parties is established in chapter 44 of the Civil Procedure Code. The most relevant scenarios for the purposes of this report include the following situations:

- The respondent organisation is situated within the territory of the Russian Federation or the respondent citizen has their place of residence in the Russian Federation (article 402(2) of the Civil Procedure Code).
- The management body, an affiliate, or a representative of the foreign person is situated within the territory of the Russian Federation (article 402(3)(1) of the Civil Procedure Code).
- The respondent has property situated within the territory of the Russian Federation (article 402(3)(2) of the Civil Procedure Code).
- In a case concerning harm resulting from a serious injury, other harm to health, or harm resulting from the death of a breadwinner, the harm has occurred within the territory of the Russian Federation, or the claimant has their place of residence in the Russian Federation (article 402(3)(4) of the Civil Procedure Code).

Q8 Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

74. The most detailed and recent account of Russian law in English is A Yagelnitskiy, 'Basics of Russian tort law' in Mauro Bussani (ed) *Comparative Tort Law: Global Perspectives* (2nd edition, Edward Elgar Publishing 2021).

75. **Leading textbooks in Russian:**

- EA Sukhanov (ed), *Civil Law: Volume 4* (Faculty of Law, Moscow State University 2020)
- BM Gongalo (ed), *Civil Law: Volume 2* (Faculty of Law, Moscow State University 2017)
- AP Sergeev (ed), *Civil Law: Volume 3* (Faculty of Law, Moscow State University 2016)

76. **Some insights on damages and other civil remedies**, as well as on state liability may be found in this commentary on the general provisions of the Civil Code:

- AG Karapetov (ed), *Key Provisions of Civil Law: Article-by-Article Commentary to Articles 1–16.1 of the Civil Code of the Russian Federation* (Digital format in public domain; print edition Statut 2020). A volume of commentary on tort law provisions is currently in writing and is expected to be released soon.

77. **Doctrinal sources are scattered, but the following articles in legal periodicals are useful:**

- D Epikhina, 'Liability for Jointly Caused Damage' (2018) The Commercial Litigation Review 8
- E Evstigneev, 'Issues of Fault and Causation in Tort Law' (2020) Civil Law Review 1
- A Markelova, 'Damage on the Part of Public Authorities: Proof and Recovery' (2017) Commercial Case Law for Lawyers No 8
- V Mikhailov, 'Theories of Causation and the Establishment of Limits of Liability' (2019) Civil Law Review 4
- O Petrol and A Yagelnitskiy, 'On the Issue of Liability of State for the Harm Caused by Proceedings in Administrative Case: Case comment on the judgment of RF SC No. 305-ES15-8490 of 19.11.2015' (2016) The Commercial Litigation Review 1
- G Sudarev, 'Some Difficulties in Delimitating the Fault of the Injured Party' (2020) Civil Law Review 3
- N Tololaeva, 'Trends in Russian Jurisprudence in the Context of the European Debate on 'Real' and 'Fake' Solidary Obligations' (2016) Civil Law Review 3
- A Yagelnitskiy, 'Trends in Damages Cases' (2019) Statute 3

78. **With regards to human rights violations in general** and the three defined harms in particular, the following sources may be of use:
    - N Kostenko (ed), Human Rights in the Russian Federation: A Collection of Reports on the Events of 2018 (2018)
    - N Kolotova, N Varlamova and T Vasil'eva (eds), Human Rights between the Past and the Future (2021)
    - S Kolmakov, Constitutional Freedom of Assembly in the Legislation of Post-Soviet Countries (2021)
    - N Kichigin, Legal Framework for Environmental Harm Compensation (2017)
    - A Lushnikov and M Lushnikova, Labour Rights in the 21st Century: Current State and Development Trends (2015)
79. Most texts of federal laws and judicial decisions in Russian are accessible via legal database services with a paid subscription, such as Consultant and Garant. The texts of federal laws are also published on pravo.gov.ru, whereas the texts of judicial decisions can be found on kad.arbitr.ru (for commercial courts), bsr.sudrf.ru (for courts of general jurisdiction), and sudact.ru (for both).[38]

38 Note that government-sponsored resources may not be accessible from outside of Russia.

CaseScenarios

1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. READ MORE

2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. READ MORE

3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. READ MORE

CaseScenario 1

Q1 **Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

Claims against police

80. Injured, tortured, or unlawfully arrested protesters may bring an action in tort against the police under articles 1064, 1069, and 1070 of the Civil Code. Article 1070 is rarely applicable in practice, as police tend to detain protesters under a procedure termed 'administrative detainment' instead of 'arrest' (detainment is an enforcement measure intended to identify a person, investigate an alleged administrative offence, or prevent one, whereas arrest is an administrative punishment and is longer-term).

81. First, the claimant will need to prove harm, wrongful behaviour, and causation between the harmful behaviour and the harm (fault will be presumed or eliminated if article 1070 applies). Wrongfulness is often the key hurdle for the claimant: they need to prove that actions of the police were unlawful, which may be a high threshold in practice. First, the police are generally entitled to apply 'administrative detainment' if they have grounds to believe that there are circumstances justifying detainment, and it cannot be required that at the moment of detainment a competent executive possesses all the evidence necessary for resolution of the case on the merits.[39] Consequently, police are usually allowed a margin of flexibility in the detainment of protesters, which makes it difficult to prove that the action of detainment was unreasonably exercised.

82. Second, police are generally entitled to apply force proportionate to the situation (articles 19-23 of the Law on Police), hence collateral injuries are often tolerated (unless one can prove that the use of force was disproportionate). Consequently, police are usually allowed a margin of flexibility as to use of force and it may be difficult to prove excessiveness.

83. Third, further violations in the course of detainment (like detainment without charge in excess of statutory limits, denial of access to a lawyer, ill-treatment in detention, torture, or other types of degrading treatment) may be self-standing grounds for action in tort. Many claims based on such violations fail for lack of acceptable evidence.

39 Resolution of the Constitutional Court No 9-P dated 16.06.2009.

84. Compensable damages in cases of injury will generally consist of moral damages and medical costs. In cases of unlawful detention, only moral damages will usually be compensated. However, a victim may be able to prove that their detention resulted in further inconveniences (eg an arrested lawyer missed an important hearing). But there is always a risk that a court will consider the causation to be too indirect and decline the claim, at least in part. Awarded damages are usually small, close to nominal.

Claims against Security Co

85. As for Security Co (and/or its personnel), a claim against it may be filed as against an accomplice to the actions of the police under article 1080 of the Civil Code. As stated in [31]-[36] above, one of the commonly applied scenarios requires proof that Security Co shared the common intent with the police to cause harm by unlawful behaviour. Such proof appears to be difficult to support in this situation. Security Co would have had sound reasons for assisting the police under the assumption that the police would be acting lawfully, or they may have had no knowledge of what the assistance was for. In order to hold Security Co liable, one would need to demonstrate that Security Co should have realised that the police would be acting unlawfully, and that Security Co shared this intent by aiding the police. We have not located cases where an accomplice is held liable along with the police in similar circumstances.

Q2 **If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.**

86. Protesters may choose alternative routes identified in [71] above. For a criminal case approach, the following crimes may be applicable: excess in using official powers (article 286 of the Criminal Code); intentional infliction of injuries to health (articles 111-112, 114-115 of the Criminal Code); or obstruction of a meeting, assembly, demonstration, procession, or picketing, or obstruction of participation therein (article 149 of the Criminal Code). For an administrative case approach, the following administrative liability scenarios may apply: violation of the legislation on meetings, rallies, demonstrations, processions, and picketing (article 5.38 of the Administrative Offence Code); and battery (article 6.1.1 of the Administrative Offence Code). However, law enforcement authorities would normally be unwilling to investigate and prosecute cases against their own colleagues.

Q3 **Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?**

87. There are many cases relevant to Case Scenario 1, and many are politically and socially sensitive. We will outline some trends and give examples below.

88. There have been some cases that were decided, fully or partially, in favour of claimants. In one case, a woman who participated in the rally known as the 'March of Dissenters' refused to show the police the contents of her belongings and did not comply with the officer's instruction to proceed to the police bus. In order not to be forcibly removed she sat on the pavement. However, three officers lifted her off the ground, took her by the arms and put her into a police car, and then put her into the bus where she spent the next three hours. Afterwards, she was taken to a police station where within an hour she began to feel unwell. (This later proved to be hypertensive emergency.) An ambulance took her to the hospital. She was awarded compensation for moral sufferings in the sum of RUB 10,000 (EUR 141 – just 10 per cent of what she claimed), and her claim for medical expenses was denied.[40]

89. There have also been cases that were decided against claimants. In one case, a one-woman picketer was detained and administrative proceedings were initiated against her for violation of the regulated picket organisation procedure. Although these proceedings were dismissed by a court, compensation for moral damages was denied since the picketer reportedly failed to prove that she had endured any physical or moral sufferings. The court held that 'the dismissal of the administrative proceedings is not per se a basis for the conclusion regarding the official's fault for inflicting moral damages upon [the picketer], since the official's actions of drawing up an administrative offence protocol *did not violate any personal non-pecuniary rights* [of the picketer]'.[41]

90. The courts enjoy a significant margin of flexibility as to how facts are assessed so that decisions may be completely at variance even in largely identical situations. Nonetheless, according to the official data of the Judicial Department at the Supreme Court for 2021, out of 3,230 claims for compensation for harm resulting from illegal actions of investigative and prosecution authorities, court compensation (full or partial) was awarded in 2,115 cases, that is *approximately 65 per cent of cases*.

91. Some notable judgments have been issued by the ECtHR. For instance, in *Kazantsev and others v Russia*,[42] the Court found, inter alia, violations of article 3 ECHR in that the applicants were beaten up by unidentified police officers on the day of the 'March of Dissenters' rally (15 April 2007). In *Kasparov and others v Russia*,[43] the Court found that '[the applicants] dispersal and arrest constituted an interference with their right of peaceful assembly, as did the ensuing administrative charges brought against them'.

SPOTLIGHT: CASE STUDY

There are cases where public authorities and operators of public services have successfully claimed damages from protest organisers for economic losses caused by the protests. For example, in one case the organisers of a protest were obliged to pay damages of RUB 1.2 million (EUR 16,901) to a state-owned company operating bus networks to compensate for transport downtime resulting from the protests.[44]

40 Ruling of the Nizhny Novgorod Regional Court in case No 33-5041 dated 24.05.2011. For examples of other cases that were decided in favour of the claimants see the Ruling of the Ryazan Regional Court in case No 33-2302 dated 26.11.2014; and the Ruling of the St Petersburg City Court in case No 33-15741/2016 dated 26.07.2016.

41 Ruling of the Third Cassation Court in case No 2-3392/2020 dated 12.07.2021. For examples of other cases decided against the claimants, see the Ruling of the Third Cassation Court in case No 88-1053/2020 dated 03.02.2020; and the Ruling of Moscow City Court in case No 33-4535/20.

42 No 61978/08, 16 June 2020.

43 No 51988/07, 13 December 2016.

44 Judgment of Koptevsky District Court in case No 2-1598/2019 dated 10.09.2019.

CaseScenario 2

Q1 **Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

Claims against Subsidiary Co

92. Russian law distinguishes between direct harm to the environment (public environmental harm) and reflective harm suffered by private individuals as a result of environmental deterioration (private environmental harm). Actions for compensation for the **public environmental harm** may be initiated by a wide range of applicants (federal, state, and municipal government bodies, prosecutor, individuals, public associations, and non-profit organisations acting in the sphere of environment protection). If successful, compensation is paid to the respective local budget (see Spotlight box after [15] above).

93. Claims for compensation for **private environmental harm** may be brought by persons or groups of persons who suffered the harm. Claims may be brought through an opt-in class action mechanism (although use of class actions is scarce in practice) (see [68] above). The claimant(s) will need to prove harm, wrongful behaviour, and a causal link between the behaviour and the harm (fault will be presumed). If harm is caused by or because of an 'ultrahazardous activity', it will be deemed a case of strict liability, and the respondent will not be able to exclude its liability by proving that no fault was present on its part.

94. Claimants may experience difficulty in proving causation in these cases. In the context of public environmental harm cases, the Supreme Court has held that when a respondent exceeds standards for permissible environmental impact the causation is presumed and the burden of disproving it switches to the respondent.[45] It remains to be tested whether courts will be receptive to this approach in private environmental harm cases.

Claims against Parent Co

95. Parent Co may be found liable either as an accomplice to the wrongdoing (should common intent be proven), or for siphoning off assets from the Subsidiary Co to avoid liability, or, in context of Subsidiary Co's bankruptcy, as a controlling person which caused bankruptcy of the Subsidiary Co (see [39]-[41] above).

45 Plenum No 49 (n 19), para 7.

Q2 If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.

96. Victims may choose additional routes enumerated in [71] above. Chapter 26 of the Criminal Code and Chapter 8 of the Administrative Offence Code may apply.

Q3 Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?

97. We are not aware of high-profile lawsuits in the private environmental harm context.

98. There are several noteworthy public environmental harm cases. For instance, Norilsk-Taimyr energy company was obliged to pay more than RUB 146 billion (EUR 2 billion) because of a fuel spill into the Ambarnaya river.[46] This was a record amount awarded. In another case, Rosekoprompererabotka was obliged to pay compensation in the amount of RUB 3.4 billion (EUR 47.9 million) for illegal disposal of waste on the land in the Priobskoye oil field.[47]

99. In 2018-2020, protests in Shiyes against the construction of a massive landfill which would have led to pollution of surface and underground waters (and through them, pollution of the White Sea), attracted lots of public attention, was widely covered by mass media, and proved fruitful. In 2020, all the already-built facilities were declared unauthorised constructions and they were ordered to be demolished.[48]

46 Judgment of Krasnoyarsk Region Commercial Court in case No A33-27273/2020 dated 12.02.2021.

47 Resolution of the Tenth Commercial Court of Appeal in case No A40-176281/17 dated 16.12.2020.

48 Judgment of Arkhangelsk Region Commercial Court in case No A05-2324/2019 dated 16.01.2020.

Case Scenario 3

Q1 **Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.**

100. Claimants may sue Factory Co in tort due to its failure to observe labour safety requirements and thus creating conditions for the accident to occur. As in Case Scenarios 1 and 2, the liability elements to be established by the claimants will be harm, wrongful behaviour, and a causal link between the latter and the former (fault will be presumed).

101. The harm would consist of the following:

- *For claimants who were injured*: loss of income, additional expenses (medical treatment etc) and non-pecuniary (moral) damages resulting from the harm to personal rights (in this case, health).
- *For claimants whose beloved ones perished*: burial expenses, damages due to loss of the breadwinner (provided that additional criteria are met, namely that claimants are unable to work or are dependents of the deceased), and non-pecuniary (moral) damages for moral sufferings resulting from the death of the close relatives.

102. Claims for medical treatment may be excluded if victims could have obtained such treatment in a high-quality and timely manner free of charge under mandatory health insurance mechanisms (see [50] and preceding Spotlight box above). Victims will also be entitled to payments under compulsory social insurance against industrial accidents and work-related diseases.

103. A claim against Brand Co will most likely fail since its involvement does not appear sufficient to qualify as the actions of an accomplice: it was not an active participant in human rights violations committed by Factory Co (even if it was aware of them) and Brand Co and Factory Co did not share a common intent.

104. If it is shown on facts that Brand Co created incentives for Factory Co to pursue its abusive policy, it may, in principle, be a sufficient ground for an action against Brand Co as an accomplice. However, we are not aware of any relevant case law to date.

Q2 If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?

105. Victims may choose additional routes enumerated in [71] above. Criminal liability for violation of labour protection rules entailing, by negligence, death of two or more persons (article 143(3) of the Criminal Code) may apply.

Q3 Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?

106. We are not aware of any high-profile case relevant to Scenario 3.

SPOTLIGHT: *NOSOV* CASE

The *Nosov* case, decided by the Supreme Court, although not high-profile, is notable for its development of the law.[49] In this case, a watchman guarded a construction site surrounded by a fence with a six-metre gap (contrary to labour safety requirements). A robber entered the construction site through the gap and murdered the watchman who attempted to stop him. The relatives of the deceased sued his employer in tort for compensation of moral damage. The Supreme Court held that the employer's failure to prevent unhindered access to the site materially contributed to the ultimate result, making the employer liable in tort. Consequently, despite the actions of the murderer being the direct cause of the harm, the negligent inaction of the employer contributed to (or, rather, occasioned) the harm, which the Supreme Court held sufficient to hold the employer liable. After a second round of litigation the *Nosov* case once again came to be reviewed by the Supreme Court, which considered the sum of RUB 250,000 (EUR 3,521) in compensation for moral sufferings resulting from the death of a close relative to be inadequately low.[50]

49 Ruling of the Supreme Court No 83-KG18-12 dated 06.08.2018.

50 Ruling of the Supreme Court No 83-KG19-12 dated 14.10.2019.

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